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November 3, 2005

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In reply refer to:
WPN:18-2002144.02:meanc

Subject Site: San Marcos Highlands Project, San Marcos

RE: RESPONSE TO COMMENTS FROM ENDANGERED HABITATS LEAGUE ON THE DRAFT 401 CERTIFICATION FOR THE SAN MARCOS HIGHLANDS PROJECT IN SAN MARCOS, AGENDA ITEM #11

Dear Ms. Baker,

This is in response to your letter dated October 26, 2005 raising concerns about the tentative Section 401 Water Quality Certification for the San Marcos Highlands project (File No. 02C-144). The following provides a discussion of your comments. Based on the assessment of your comments, no further changes to the conditions of the tentative Certification are recommended.

Comment 1:

PROCESS LACKS COMPLETE PROJECT DISCLOSURE OF CEQA
Final environmental documentation in the CEQA process must be available for review by the Regional Board before certification. Subsequent to the original application for the 401 Certification, multiple changes to the project have been proposed, with current changes outlined only in applicant's memorandums dated March 15, 2005 through October 22, 2005 to permitting agencies. The changes may be material, requiring supplemental CEQA analysis before a final environmental document for the project proposed to be Certified is complete. Today, there is no public agency where a final San Marcos Highlands project plan – as proposed to be Certified - is available for public review. Post-CEQA material changes render an application incomplete.

Response:

In 1990 the City of San Marcos certified an Environmental Impact Report for the project, and in July 2002 certified the Supplemental Environmental Impact Report for the project. Subsequent to the approval of the CEQA Documents, on December 23, 2002, KB Home submitted an application for 401 water quality certification for the project, and on January 20, 2003, the

Regional Board informed the Applicant that their application for 401 Water Quality Certification was deemed complete.

The changes that have occurred in the project since approval of CEQA have further reduced the potential environmental impacts as they relate to hydrology and water quality. Changes inevitably come about as part of the regulatory permitting process where the project applicant must satisfy numerous permitting agencies and their concerns. Despite recent proposed changes to the project in response to various requirements, the 401 Certification application is determined to be current and complete for the purpose of certifying the project.

Comment (2):

Project Changes
Three changes have not been analyzed in a CEQA document. The project area has been expanded from the original project definition to include additional open space mitigation, and push the required wildlife corridor onto neighboring property. The headwaters pond – a spring-fed pond created by a 90-odd year old earthen spillway, is proposed to be reopened. Finally, the design of Las Posas Road submitted to the Corps of Engineers has not benefited from disclosure. The proposed changes to the project have implications to beneficial uses that must be protected by the conditions of the 401 Certification. As a practical matter, however, the CEQA requirement in the Porter-Cologne Act goes to the scope of public notice, comment, policy maker review and approval required prior to Certification.

First, the wildlife corridor has moved to run east-west across and upgrade from the headwaters seep / spring. The needed corridor, key to the WILD beneficial use, has been shifted substantially off-site in several key areas. This precludes successful reserve design as noted by USFW. This also deviates from guidelines that place one half of the 1000' minimum corridor width on applicants land. Current proposed boundaries of the open space along with road and utility easement impacts to the proposed habitat corridor remain outside review. Related concerns involve secondary fire egress access to the north (egress that would also impose additional load to the stormwater collection and basin). This access would now cut across the newly proposed wildlife corridor (as would future reach of Las Posas). These changes, affecting WILD beneficial uses, have been made without CEQA analysis.

Response:

In general, issues of wildlife corridor design and implementation in upland areas are not addressed by the Regional Board during the 401 certification process. The Regional Board appropriately defers these issues to the wildlife agencies involved in the permitting process. The addition of an east-west wildlife corridor into the project design was requested by wildlife agencies during meetings with the applicant. The resulting loss of 28 lots to incorporate this corridor further reduces the impervious surface area generated by the project and reduces the

potential pollutant loading that would be generated by the originally proposed 28 homes. The addition of this wildlife corridor serves to enhance the ability of wildlife to move between large open space areas.

The storm water treatment basin has been sized in accordance with the Municipal Permit sizing requirements and would be capable of treating the entire site, including the secondary fire egress access to the north.

Comment (3): The second change from the original CEQA analysis relates to the headwaters seep/spring pond. Now captured by earthen dam, the pond remained intact in the original CEQA project, but would now be opened. While applicant asserts that water quality benefits attend this proposal, it also has attendant hydrological impacts (watercourse velocity and volume impacts – particularly in storm events, scouring and downstream channel widening) to define and analyze as well as wildlife water source impacts. Informal public participation has greatly increased the Corps and the Regional Board staff's knowledge of this headwaters – source spring, flows, and water quality. Formal public notice and comment and policy maker review is warranted to allow all parties to analyze hydrology impacts to the downstream watercourse, and illuminate the decision. Beneficial uses WILD and REC-2 are issues here, as is water quality.

Response:

Man-made alterations to a natural stream system should be removed whenever possible to restore a stream system to a more natural hydrologic state. During early meetings on the San Marcos Highlands, project the Army Corps of Engineers requested that alternatives be examined for the development that reduced impacts to Waters of the U.S. and increased onsite mitigation acreages for the project. After reviewing several different alternatives provided by the Applicant, a unanimous consensus was reached by the resource agencies that removal of the pond and the restoration of the creek to a more natural hydrologic state was the preferred route in improving the proposed compensatory mitigation. Implementation of the proposed mitigation will restore and enhance a total of 7.0 acres of riparian corridor, and ensures "no net loss" of wetlands by the creation of 0.05 acre of new wetland.

Comment (4): Finally, the Corps of Engineers has required a design for Las Posas Road to Buena Creek be submitted in application for the 404 but no CEQA has been conducted on that element. Future design of the road is important to evaluate cumulative effects, since the project at hand involves funding the future road segment.

Response:

The extension of Los Posas Road was addressed by the Applicant in a cumulative impact analysis provided in the June 2004 Updated Permit Application. It has been argued that the project as proposed has independent utility in extending Los Posas Road into the project. The further extension of Los Posas Road will require additional CEQA documentation and environmental permitting which would be addressed should the extension of the road become a reality in the future.

Comment (5):

SUBSTANTIVE ISSUES OF BENEFICIAL USE PROTECTIONS REMAIN

Our review of the Regional Board record and the draft Certificate indicates beneficial use protection issues we would like to prepare complete substantive comments on, given sufficient project information. The file continues to lack the final Water Quality Management Plan and Habitat Mitigation Management Plan despite Regional Board staff requests of the applicant. Since the Regional Board Certificate is conditioned on these plans, the application file should be completed by draft plans to allow public comment on the complete Certification. In the absence of a completed file, we hope to have another opportunity to review and complete comment on the plans, but direct your attention to these comments at present.

Response:

The Administrative record, or file, maintained by the Regional Board for the project does contain a complete Water Quality Management plan. The Applicants submitted a Storm Water Management Plan dated August 18, 2005. Assessment of the plan found it to be acceptable to meet the requirements of the Municipal Stormwater Permit Order No. 2001-01, and the City of San Marcos locally adopted SUSMP ordinance. The plan proposed a treatment train of structural stormwater BMP's including a properly sized extended detention basin and catch basin inlet filters on every inlet in the project. The Administrative Record also contains a conceptual Habitat Mitigation and Monitoring plan dated October 2005. The tentative certification incorporates these two documents into its conditions. The Administrative Record, or file, maintained by the Regional Board is complete.

Comment (6):

Limits per Basin Plan are Not Enough to Address Threat to Water Quality
Adding a substantial footprint of homes west, east and south of the headwaters introduces a considerable source of pollutants in close proximity to a sensitive water quality headwaters site. Mass grading the native ground that constitutes the bulk of the headwaters watershed is another significant concern. Stormwater will now be channelized and groundwater recharge that feeds the Headwaters spring will be reduced. Given the 303d listing downstream, and the scientific

importance of headwaters to basin-wide beneficial uses, site specific requirements would need to be addressed to assure anti-degredation.

Response:

Site-specific requirements have been included in the tentative 401 certification to address the issues in the above comment. During the construction phase of the project, the project is required to comply with the Statewide General Construction Permit Order No. 99-08-DWQ. Compliance with this permit is in conformance with the States Anti-degradation policy. Additionally, the certification requires the applicant to perform sedimentation/siltation monitoring to ensure that the project construction activities do not cause a net increase of sediment to Agua Hedionda Creek. After build-out of the project, the Applicant will be required to perform receiving water quality monitoring to evaluate any potential impacts to the creek.

Should results of the various monitoring efforts provide evidence of a violation of any sort the Regional Board has the authority to take suitable enforcement action and/or amend the conditions of the certification to rectify the situation.

Comment (7):

Seasonal Restrictions on Grading when Headwaters are Disturbed Should Be Considered
Grading poses significant threat to water quality from sediment where creek segments south are 303d listed for the substance. The standard requirements of the Construction Stormwater permit are incorporated, but here, around a headwaters, there is no requirement that addresses sequencing of major grading operations during wet weather seasons. This project involves a 110' high cut where the substantial quantity of earthwork and native land disturbance might properly be addressed by seasonal restrictions to grading operations rather than the standard quantity restrictions. This may strengthen prevention of sediment discharges before the diversion system is in place. Any seasonal approach should coordinate with USFW breeding season impacts to the gnatcatcher.

Response:

The project will have to comply with the Statewide Construction Stormwater Permit. The Regional Board supports a phased grading approach to construction, but it is not a specific requirement of the Statewide General Permit. KB Home will be required to develop a Stormwater Pollution Prevention Plan (SWPPP) for the construction phase of the project, implement and maintain effective erosion and sediment controls on the site at all times during the rainy season.

Comment (8):

Corridors and NCCP Reserve Designs Essential to Beneficial Use by Wildlife
The USFW Biological Opinion identifies this project as incompatible with current planning efforts – the North County MSCP and successful habitat reserve design in the County of San Diego. While Corridor issues do not relate directly to water quality, preserving the wildlife beneficial use requires wildlife accessibility to the site as well as to the water source. Here, the water source is surrounded on three sides, and the proposed corridor to the large core habitat areas does not meet minimum width criteria.

A minimum width of 1,000 feet is identified in the guidelines for the San Diego program. The reduction to 500 feet was for applicant to provide same onsite, so that adjacent property owners could provide the balance in the future. The instant proposal provides only 120-140 feet of the proposed corridor on-site and proposes to acquire the remaining depth to total 400' foot on the remaining adjacent undeveloped area to the north, obviating future efforts to complete the desired 1000' corridor. US Fish and Wildlife has highlighted the conflict between the City of San Marcos and the County plans for the importance of habitat connectivity at this location. Guidelines for habitat corridors and sensitive environmental areas promulgated in 1991 were ignored in planning San Marcos Highlands. In contrast, the County proposes the whole of the Highlands area be Reproved Mitigation Area - core to the North County Multiple Species Habitat Plan. Just as USFW recommended no 404 Certification be issued until several outstanding state NCCP program conflicts are resolved, neither should the 401 Certificate.

Habitat plans with sufficient core areas; wildlife corridors and plan connectivity across jurisdictions are integral to protecting the access of wildlife to water sources. To protect the WILD beneficial use of the headlands at issue, existing conflicts between habitat plans would be resolved to allow successful reserve design before this 401 Certification issues.

Response:

Please see response to Comment 2.

Comment (9):

Headwaters Importance to Water Quality
It is striking that we have created a regulatory system that addresses the land use value of wildlife habitat, and yet, at a rare and valuable water quality element such as a headwaters, we have no official regulation to prohibit disturbance of the headwaters native watershed itself.

In the State Board's 401 Program Scope and Strategy, we want to highlight the "disproportionate importance" of headwater streams and wetlands in maintaining basin-wide beneficial uses, and highlight that following the typical "project-specific regulation alone will not achieve the water quality goals of the State". To achieve water quality, the headwaters deserve a more thorough analysis. Here, we reiterate our concern over the lack of information available regarding the

headwaters pond and missing CEQA review of it. Questions remain, despite rumors of private studies on the quality of this water; there is no report or baseline available to the public.

Response:

The headwater stream systems are an important resource that needs to be protected. Throughout the long permitting process for this project, the Regional Board has strived to protect and enhance the most high quality portions of the headwater stream system of Agua Hedionda Creek. The functional gains derived from restoring and enhancing the main-stem of the creek and the preservation of the largest intermittent tributary would compensate for the losses of the ephemeral tributaries.

Comment (10):

(a) Is the water impacted by agricultural runoff today or is it not? **(b)** Will the valuable wetlands soils and seed bank from and around the headwaters spring pond be tested after the project is awarded, or simply disposed of? **(c)** How will the Regional Board discover and address water quality threats to this watershed if we do not investigate the facts presented by the water and sediment quality of the headwaters pond as it is today? In fact, how will we measure whether we live up to anti-degradation or if we have indeed improved water quality unless we have this baseline information?

Response:

(a) The watershed up-gradient of the creek and the project site does have a fair amount of agricultural activity occurring. Agricultural operations are a known source of water pollutants by the nature of the practices and materials that are used on a day-to-day basis. If runoff is leaving the agricultural lands and entering the creek it is likely that pollutants are entering the creek. The very limited water quality testing that was conducted by KB Home, provided a snapshot of the water quality in the pond for a particular day. A brief summary of the water quality testing results provided by the Applicant stated that:

"The results for water quality indicate levels above MCL drinking water standards and some above storm water benchmark values. Dissolved solids were slightly above benchmark values. pH was within an acceptable range. Fecal coliform was below the benchmark value of 400 MPN. All results for potential pesticides were not detectable in samples. Heavy metals were generally below benchmark values. However, the pond did have high algae growth, which could potentially indicate heavy nutrients from fertilizers."

(b) The original conceptual mitigation plan called for soils dredged from the man-made pond to be stockpiled on site and then used as a topsoil for the mitigation areas. The Regional Board had no objection to this plan. At a ACOE public meeting concerns were raised by community

members that the pond soils were potentially contaminated. In response to these concerns the Army Corps determined that stockpiling the soil on-site could potentially trigger the Inland Testing Manual (ITM) requirements. The Applicant chose to dispose of the dredged soils at a landfill to avoid the triggering of the ITM requirements, which would have resulted in additional delays and costs to the project. The mitigation areas will be seeded and planted with native plants and seeds per the mitigation plan.

(C) The Regional Board will rely on the sediment/siltation monitoring program and receiving water quality monitoring program required by the 401 water quality certification conditions to assess potential water quality threats as a result of the San Marcos Highlands project.

Comment (11):

The loss of over 5,000 linear feet of streambed is not inconsequential, but pales in comparison to the proposed 110' cut, mass grading of most of the native land watershed, the removal of the earthen spillway and the excavation of pond sediments at the headwaters. The Carlsbad Watershed Management Plan made the connection between water quality and headwaters protection predominant in their plan objective and action items, stating:

Protect Upland Headwaters Open Space: " Action Items" should strive to protect, restore, or enhance undeveloped open space in the headwaters of the watershed that will provide natural filtering capabilities for water runoff control and water quality improvements. The "Action Item" should focus on the purchase or transfer into public ownership or control as many of these resources as possible, including restrictive easements and other policies and management needed for protection. Integration with habitat conservation plans and open space planning is essential.

The Carlsbad Watershed plan discusses at length the importance of buffering streams, but there is no comparable protection scheme here that accounts for the disproportional contribution of a native headwaters to water quality. A careful basin-wide assessment of project impacts and the alternative jurisdictional land use plans that offer less adverse impact on the aquatic ecosystem is here appropriate to anti-degradation and maintaining or improving water quality.

Response:

Comment noted.

Comment (12):

Basin-Wide Analysis of Alternatives and Hydromodification are Consistent with Strategy Paper
Basin-wide analysis is needed here to protect the water quality of the entire basin. The proposed Certification highlights the challenge of the original land plan where development was concentrated on the most sensitive watershed and habitat resources of the site.

A sensitive subject, the interface between land use plans and water quality, but key because basin wide analysis reveals the bigger picture. Water quality engineers may proffer significant riparian mitigation and restoration on-site, but the project itself introduces major urban runoff challenges to the headwaters of an impaired system. Ninety percent (90%) capture of first flush stormwater where project related pollutants are the primary source, remains **more** pollution, despite monitoring limits and diversion. Hydromodification impacts of pond removal downstream have not yet been well documented for review, while velocity increases downstream are significant after the pond dam is removed. Future reaches of Las Posas Road have cumulative impacts to the watershed basin that have not been addressed, despite funding for said roadway embedded in the instant San Marcos Highland project.

Response:

It is anticipated that the implementation of the Stormwater Management Plan (and the implementation of the vegetated extended detention basin) will mitigate the downstream flow velocities in the creek when the project is complete. A hydraulic analysis contained in the plan suggests that velocities will be below those of existing condition for the 2, 10, and 100-year storm events.

Questions pertaining to this letter should be directed to Christopher Means at 858-637-5581or by email at cmeans@waterboards.ca.gov. Written correspondence pertaining to this letter should be directed to the following address:

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CC:

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